

floor to share with me some thoughts about this relationship that is not only historical and one which we take great pride in as a nation, that ability to quickly expand, to turn a manufacturing, an industrial base into an arsenal of democracy.

That hopefully will not happen, as the Senator points out. Maybe it is less likely to happen. But we must be there when it does. That aspect has been focused on by others, the need to be able to have a manufacturing base for our national security and to have a base of suppliers for our national security. I have tried to add another aspect to this argument that points to the relationship between the survival of our big three and our national security by pointing out the ongoing relationship in the area of research and development, which has produced critically important technologies currently in our vehicles and developing today the technologies which will make future vehicles.

Mr. WARNER. Our military vehicles.

Mr. LEVIN. Absolutely.

Mr. WARNER. I wish to make that clear because that technology has been available in the open market to those manufacturers, other than the oil industry, which have, in a remarkable way, taken these up-armored vehicles, that general category we have today, very quickly, to the great credit of the Secretary of Defense, Secretary Gates, he put together a structure of five companies to get into immediate production of those vehicles and into those vehicles has gone the development and technology that our distinguished colleague from Michigan has described.

Mr. LEVIN. Thankfully, we still have a few colleagues, including the great Senator from Virginia, who have a personal connection to that war.

Mr. WARNER. It was very minor, but it was a privilege to have been associated with that generation.

Mr. LEVIN. I thank my friend from Virginia.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 3 o'clock.

Thereupon, at 2:17 p.m., the Senate recessed until 3:03 p.m. and reassembled when called to order by the Presiding Officer (Ms. KLOBUCHAR).

The PRESIDING OFFICER. In my capacity as a Senator from the State of Minnesota, I suggest the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Ms. MIKULSKI. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXTENSION OF MORNING BUSINESS

Ms. MIKULSKI. Madam President, I ask unanimous consent that the period

for the transaction of morning business be extended until 5 p.m., with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. MIKULSKI. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

SILO TAX SHELTER

Mr. BAUCUS. Madam President, the House bill before us contains a provision that causes me great concern. The provision would make the U.S. Government an active participant in an abusive tax shelter transaction.

In the past, Congress has voted to shut that tax shelter down. And this week, I sought to offer an amendment to strike the provision from this bill. But I have been prevented from offering that amendment. That this provision will remain in the bill makes this bill a far less attractive measure.

Section 18 of the bill requires the United States to serve as a guarantor of obligations incurred by domestic subway and other transportation systems. These obligations arise from the systems' participation in leasing arrangements called lease in/lease out, or LILOs, and sale in/lease out, or SILOs.

LILOs and SILOs are sham transactions. The IRS has designated them as "listed" tax shelters. That means that these tax shelters are among the most egregious abuses of the tax law.

LILOs and SILOs are very complicated deals, designed to look like legitimate leasing transactions. But in reality, they are shams.

In a SILO, a tax-exempt entity nominally "sells" an asset, like a subway system. The other party to the deal is an investor who is subject to taxation and who needs a tax write-off. The investor nominally "buys" the asset. The investor then nominally "leases" the asset back to the tax-exempt entity.

In truth, the benefits and burdens of ownership never shift. And the sale and the lease have no economic reality.

These parties purport to make purchase payments and rent payments. But in reality, these payments are just paper entries, facilitated by a bank that is in on the deal. The investor pays the tax exempt entity an up-front fee in exchange for its willingness to participate in the deal. But other than that, no real money changes hands.

There is little, if any, risk to any party to these transactions. That is because the deal is cooked from the beginning. It is planned so as to eliminate any risk.

But there are significant tax benefits to the investor. The investor gets interest and depreciation deductions. And those deductions generate tax losses. Employing these tax losses, the investor pays less tax on income that the investor earns elsewhere.

This chart illustrates how a SILO transaction works. You do not have to understand all the details to see how complicated the transaction is.

As Chairman of the Finance Committee, I have had these deals on my radar screen for quite some time. In 2003, the Finance Committee held a hearing with a confidential informant. The witness risked his professional reputation to tell us how abusive LILO and SILO transactions are.

I pushed for legislation to shut these deals down. The 2004 Jobs Act eliminated the tax benefits for most of the investors who had entered into these transactions.

Since 2005, I have worked to shut down the remaining deals that the Jobs Act failed to address. Unfortunately, our efforts have met with resistance. Some argue that shutting down these transactions would be applying law retroactively. But I believe that these transactions always violated the law, as they lack any economic substance.

In the Tax Increase Prevention and Reconciliation Act of 2005, Congress imposed excise taxes on tax-exempt entities and their managers who entered into tax shelter transactions. That law recognized the role that some tax exempt entities, including transit agencies, played as "accommodating parties" to tax shelter deals.

Since 1999, the IRS has devoted considerable resources to shutting down these deals. The IRS has designated both LILOs and SILOs as "listed" tax shelter transactions. The IRS has audited every one of these transactions that it could find. The IRS has litigated four cases, and won every time. Recently, the IRS announced a settlement initiative to shut down the remaining cases and reports an 80-percent participation rate.

We have been trying to stop these tax shelters for years. So how does the Government end up guaranteeing this kind of tax shelter? The complicated structure of LILOs and SILOs plays a part.

Under the terms of the agreements, transit agencies are required to obtain a guarantee from an insurer. The insurer guarantees that the agencies will be able to buy back the subway at the end of the lease period. The agreements require that the insurer have a very high credit rating.

The current economic crisis has caused downgrades of insurers' credit ratings. That has put the tax-exempt entities into technical default on their agreements. Under the agreements, when the tax-exempt entities default, the investors have a right to terminate the lease.

The investors are taking advantage of this legal opportunity. They are trying to cash in. The investors are attempting not just to recoup the nominal purchase price of the assets. They are also demanding that the transit agencies pay over the value of the tax benefits that the investor will lose as a result of the premature unwinding of